

AMENDED IN SENATE AUGUST 30, 2012

AMENDED IN SENATE AUGUST 7, 2012

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1098

Introduced by Assembly Member ~~Hagman~~ Carter

(~~Coauthor: Assembly Member Solorio~~)

(~~Coauthors: Senators Calderon and Gaines~~)

(Principal coauthors: Senators Negrete McLeod and Emmerson)

February 18, 2011

An act to amend ~~Section 790.03 of the Insurance Code, relating to insurance Sections 11003 and 11005 of the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1098, as amended, ~~Hagman~~ Carter. ~~Insurance: unfair methods of competition: automotive repair. Vehicle license fees: allocation.~~

Existing law requires that a specified amount of motor vehicle license fees deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund be allocated by the Controller, as specified, to the Local Law Enforcement Services Account in the Local Revenue Fund 2011, for allocation to cities, counties, and cities and counties.

This bill would instead require, on and after July 1, 2012, that those revenues be distributed first to each city that was incorporated from an unincorporated territory after August 5, 2004, in an amount determined pursuant to a specified formula, second to each city that

was incorporated before August 5, 2004, in an amount determined pursuant to a specified formula, and third to the Local Law Enforcement Services Account in the Local Revenue Fund 2011, for allocation to cities, counties, and cities and counties. By authorizing within the Motor Vehicle License Fee Account in the Transportation Tax Fund, a continuously appropriated fund, to be used for a new purpose, the bill would make an appropriation.

Existing law requires the Legislature to determine and appropriate annually an amount for the use of the Department of Motor Vehicles and the Franchise Tax Board for the enforcement of the Vehicle License Fee Law.

This bill would not allow that amount to be appropriated from the Motor Vehicle License Fee Account in the Transportation Tax Fund.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law defines unfair methods of competition and unfair and deceptive acts or practices in the business of insurance, including knowingly committing or performing with such frequency as to indicate a general business practice of various unfair claims settlement practices, such as not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. If a person engages in any unfair method of competition or any unfair or deceptive act or practice, that person may be subject to a civil penalty fixed by the Insurance Commissioner.~~

~~This bill would add to the list of unfair claims settlement practices (1) failing to estimate the cost of automotive repairs in accordance with accepted trade standards for good and workmanlike automotive repair, (2) adjusting a claimant's written repair estimate, if the repair costs will exceed the written repair estimates, without providing specified information, including edited copies of either the insurer's estimate or the claimant's auto body repair shop estimate, and (3) requiring the use of nonoriginal equipment manufacturer replacement crash parts in the repair of an automobile.~~

~~Vote: majority $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
 2 *following:*

1 (a) *It is the intent of the Legislature commencing with the*
2 *2012–13 fiscal year to reinstate allocations of motor vehicle license*
3 *fees to recently incorporated cities and cities which annexed*
4 *inhabited areas, consistent with the allocation formula those*
5 *communities relied upon when making the decision to incorporate*
6 *or annex the affected territory.*

7 (b) *It is also the intent of the Legislature to ensure that such*
8 *revenues and incentives remain available for other communities*
9 *considering incorporation, including unincorporated communities*
10 *of East Los Angeles, and annexations of inhabited areas, including*
11 *disadvantaged unincorporated communities.*

12 (c) *Numerous state laws support the policy of furthering orderly*
13 *development in compact forms, including the annexation of*
14 *inhabited territory and the incorporation of communities consistent*
15 *with state laws, the policies of local agency formation commissions,*
16 *and often the approval of local voters.*

17 (d) *The passage of Senate Bill 89 of the 2011–12 Regular*
18 *Session (Chapter 35 of the Statutes of 2011) removed critical*
19 *revenues from these communities without providing a reasonable*
20 *opportunity for input from the affected agencies and the public.*

21 SEC. 2. *Section 11003 of the Revenue and Taxation Code is*
22 *amended to read:*

23 11003. ~~(a) Subject to subdivision (b), the~~ *The* Legislature shall
24 annually determine and appropriate an amount for the use of the
25 Department of Motor Vehicles and the Franchise Tax Board for
26 the enforcement of this part. *That amount shall not be appropriated*
27 *from the Motor Vehicle License Fee Account in the Transportation*
28 *Tax Fund.*

29 ~~(b) For the 2011–12 fiscal year, twenty-five million dollars~~
30 ~~(\$25,000,000) shall be deemed to be the cost to the Department~~
31 ~~of Motor Vehicles of collecting the motor vehicle license fees that~~
32 ~~are collected with the motor vehicle registration fees and other~~
33 ~~fees.~~

34 SEC. 3. *Section 11005 of the Revenue and Taxation Code is*
35 *amended to read:*

36 11005. After payment of refunds therefrom and ~~after making~~
37 ~~the deductions authorized by Section 11003 and~~ reserving the
38 amount determined necessary by the Pooled Money Investment
39 Board to meet the transfers ordered or proposed to be ordered
40 pursuant to Section 16310 of the Government Code, the balance

1 of all motor vehicle license fees and any other money appropriated
2 by law for expenditure pursuant to this section, deposited to the
3 credit of the Motor Vehicle License Fee Account in the
4 Transportation Tax Fund, and remaining unexpended in that
5 account at the close of business on the last day of the calendar
6 month, shall be allocated by the Controller by the 10th day of the
7 following month in accordance with the following:

8 (a) *On and after July 1, 2012:*

9 (1) *First, to each city that was incorporated from an*
10 *unincorporated territory after August 5, 2004, in an amount equal*
11 *to the product of the following two amounts:*

12 (A) *The quotient derived from the following fraction:*

13 (i) *The numerator is the product of the following two amounts:*

14 (I) *Fifty dollars (\$50) per year.*

15 (II) *The fraction determined as the total amount of vehicle*
16 *license fee revenue collected during the most recent fiscal year*
17 *divided by the total amount of vehicle license fee revenue collected*
18 *during the 2004–05 fiscal year.*

19 (ii) *The denominator is the fraction determined as the actual*
20 *population, as defined in subdivision (d) of Section 11005.3, of all*
21 *cities during the most recent fiscal year, divided by the actual*
22 *population, as defined in subdivision (d) of Section 11005.3, of all*
23 *cities in the 2004–05 fiscal year.*

24 (B) *The city's population determined in accordance with Section*
25 *11005.3.*

26 (2) *Second, to each city that was incorporated before August*
27 *5, 2004, in an amount equal to the product of the following two*
28 *amounts:*

29 (A) *The quotient derived from the following fraction:*

30 (i) *The numerator is the product of the following two amounts:*

31 (I) *Fifty dollars (\$50) per year.*

32 (II) *The fraction determined as the total amount of vehicle*
33 *license fee revenue collected during the most recent fiscal year*
34 *divided by the total amount of vehicle license fee revenue collected*
35 *during the 2004–05 fiscal year.*

36 (ii) *The denominator is the fraction determined as the actual*
37 *population, as defined in subdivision (d) of Section 11005.3, of all*
38 *cities during the most recent fiscal year, divided by the actual*
39 *population, as defined in subdivision (d) of Section 11005.3, of all*
40 *cities in the 2004–05 fiscal year.*

1 (B) *The actual population, as defined in subdivision (d) of*
2 *Section 11005.3, residing in areas annexed after August 5, 2004,*
3 *as of the date of annexation.*

4 ~~(a) On and after July 1, 2011~~

5 (3) *Third, to the Local Law Enforcement Services Account in*
6 *the Local Revenue Fund 2011, as established by Section 30025 of*
7 *the Government Code, for allocation to cities, counties, and cities*
8 *and counties.*

9 (b) *On and after July 1, 2011, and before July 1, 2012, to the*
10 *Local Law Enforcement Services Account in the Local Revenue*
11 *Fund 2011, as established by Section 30025 of the Government*
12 *Code, for allocation to cities, counties, and cities and counties.*

13 ~~(b)~~

14 (c) On or after July 1, 2004, but before July 1, 2011:

15 (1) First, to the County of Orange. For the 2004–05 fiscal year,
16 that county shall be allocated fifty-four million dollars
17 (\$54,000,000) in monthly installments. For the 2005–06 fiscal year
18 and each fiscal year thereafter, that county shall receive, in monthly
19 installments, an amount equal to the amount allocated under this
20 section for the prior fiscal year, adjusted for the percentage change
21 in the amount of revenues credited to the Motor Vehicle License
22 Fee Account in the Transportation Tax Fund from the revenues
23 credited to that account in the prior fiscal year. Moneys allocated
24 to the County of Orange under this subdivision shall be used first
25 for the service of indebtedness as provided in paragraph (1) of
26 subdivision (a) of Section 11001.5. Any amounts in excess of the
27 amount required for this service of indebtedness may be used by
28 that county for any lawful purpose.

29 (2) Second, to each city, the population of which is determined
30 under Section 11005.3 on August 5, 2004, in an amount equal to
31 the additional amount of vehicle license fee revenue, including
32 offset transfers, that would be allocated to that city under Sections
33 11000 and 11005, as those sections read on January 1, 2004, as a
34 result of that city's population being determined under subdivision
35 (a) or (b) of Section 11005.3.

36 (3) Third, to each city that was incorporated from an
37 unincorporated territory after August 5, 2004, in an amount equal
38 to the product of the following two amounts:

39 (A) The quotient derived from the following fraction:

40 (i) The numerator is the product of the following two amounts:

1 (I) Fifty dollars (\$50) per year.

2 (II) The fraction determined as the total amount of vehicle
3 license fee revenue collected during the most recent fiscal year
4 divided by the total amount of vehicle license fee revenue collected
5 during the 2004–05 fiscal year.

6 (ii) The denominator is the fraction determined as the actual
7 population, as defined in subdivision (e) of Section 11005.3, of
8 all cities during the most recent fiscal year, divided by the actual
9 population, as defined in subdivision (e) of Section 11005.3, of
10 all cities in the 2004–05 fiscal year.

11 (B) The city's population determined in accordance with Section
12 11005.3.

13 (4) Fourth, to each city that was incorporated before August 5,
14 2004, in an amount equal to the product of the following two
15 amounts:

16 (A) The quotient derived from the following fraction:

17 (i) The numerator is the product of the following two amounts:

18 (I) Fifty dollars (\$50) per year.

19 (II) The fraction determined as the total amount of vehicle
20 license fee revenue collected during the most recent fiscal year
21 divided by the total amount of vehicle license fee revenue collected
22 during the 2004–05 fiscal year.

23 (ii) The denominator is the fraction determined as the actual
24 population, as defined in subdivision (e) of Section 11005.3, of
25 all cities during the most recent fiscal year, divided by the actual
26 population, as defined in subdivision (e) of Section 11005.3, of
27 all cities in the 2004–05 fiscal year.

28 (B) The actual population, as defined in subdivision (e) of
29 Section 11005.3, residing in areas annexed after August 5, 2004,
30 as of the date of annexation.

31 (5) Fifth, to the cities and cities and counties of this state in the
32 proportion that the population of each city or city and county bears
33 to the total population of all cities and cities and counties in this
34 state, as determined by the Demographic Research Unit of the
35 Department of Finance. For the purpose of this subdivision, the
36 population of each city or city and county shall be determined in
37 accordance with Section 11005.3.

38 *SEC. 4. This act is an urgency statute necessary for the*
39 *immediate preservation of the public peace, health, or safety within*

1 *the meaning of Article IV of the Constitution and shall go into*
2 *immediate effect. The facts constituting the necessity are:*

3 *In order to restore critical revenues to recently incorporated*
4 *cities and cities that annexed inhabited areas, removed from these*
5 *communities as a result of the passage of Senate Bill 89 of the*
6 *2011–12 Regular Session (Chapter 35 of the Statutes of 2011)*
7 *without providing a reasonable opportunity for input from the*
8 *affected agencies and the public, it is necessary that this act take*
9 *effect immediately.*

10 SECTION 1. ~~Section 790.03 of the Insurance Code is amended~~
11 ~~to read:~~

12 ~~790.03. The following are hereby defined as unfair methods~~
13 ~~of competition and unfair and deceptive acts or practices in the~~
14 ~~business of insurance:~~

15 ~~(a) Making, issuing, circulating, or causing to be made, issued~~
16 ~~or circulated, any estimate, illustration, circular, or statement~~
17 ~~misrepresenting the terms of any policy issued or to be issued or~~
18 ~~the benefits or advantages promised thereby or the dividends or~~
19 ~~share of the surplus to be received thereon, or making any false or~~
20 ~~misleading statement as to the dividends or share of surplus~~
21 ~~previously paid on similar policies, or making any misleading~~
22 ~~representation or any misrepresentation as to the financial condition~~
23 ~~of any insurer, or as to the legal reserve system upon which any~~
24 ~~life insurer operates, or using any name or title of any policy or~~
25 ~~class of policies misrepresenting the true nature thereof, or making~~
26 ~~any misrepresentation to any policyholder insured in any company~~
27 ~~for the purpose of inducing or tending to induce the policyholder~~
28 ~~to lapse, forfeit, or surrender his or her insurance.~~

29 ~~(b) Making or disseminating or causing to be made or~~
30 ~~disseminated before the public in this state, in any newspaper or~~
31 ~~other publication, or any advertising device, or by public outcry~~
32 ~~or proclamation, or in any other manner or means whatsoever, any~~
33 ~~statement containing any assertion, representation, or statement~~
34 ~~with respect to the business of insurance or with respect to any~~
35 ~~person in the conduct of his or her insurance business, which is~~
36 ~~untrue, deceptive, or misleading, and which is known, or which~~
37 ~~by the exercise of reasonable care should be known, to be untrue,~~
38 ~~deceptive, or misleading.~~

39 ~~(c) Entering into any agreement to commit, or by any concerted~~
40 ~~action committing, any act of boycott, coercion, or intimidation~~

1 resulting in or tending to result in unreasonable restraint of, or
2 monopoly in, the business of insurance.

3 (d) ~~Filing with any supervisory or other public official, or~~
4 ~~making, publishing, disseminating, circulating, or delivering to~~
5 ~~any person, or placing before the public, or causing directly or~~
6 ~~indirectly, to be made, published, disseminated, circulated,~~
7 ~~delivered to any person, or placed before the public any false~~
8 ~~statement of financial condition of an insurer with intent to deceive.~~

9 (e) ~~Making any false entry in any book, report, or statement of~~
10 ~~any insurer with intent to deceive any agent or examiner lawfully~~
11 ~~appointed to examine into its condition or into any of its affairs,~~
12 ~~or any public official to whom the insurer is required by law to~~
13 ~~report, or who has authority by law to examine into its condition~~
14 ~~or into any of its affairs, or, with like intent, willfully omitting to~~
15 ~~make a true entry of any material fact pertaining to the business~~
16 ~~of the insurer in any book, report, or statement of the insurer.~~

17 (f) (1) ~~Making or permitting any unfair discrimination between~~
18 ~~individuals of the same class and equal expectation of life in the~~
19 ~~rates charged for any contract of life insurance or of life annuity~~
20 ~~or in the dividends or other benefits payable thereon, or in any~~
21 ~~other of the terms and conditions of the contract.~~

22 (2) ~~This subdivision shall be interpreted, for any contract of~~
23 ~~ordinary life insurance or individual life annuity applied for and~~
24 ~~issued on or after January 1, 1981, to require differentials based~~
25 ~~upon the sex of the individual insured or annuitant in the rates or~~
26 ~~dividends or benefits, or any combination thereof. This requirement~~
27 ~~is satisfied if those differentials are substantially supported by~~
28 ~~valid pertinent data segregated by sex, including, but not limited~~
29 ~~to, mortality data segregated by sex.~~

30 (3) ~~However, for any contract of ordinary life insurance or~~
31 ~~individual life annuity applied for and issued on or after January~~
32 ~~1, 1981, but before the compliance date, in lieu of those~~
33 ~~differentials based on data segregated by sex, rates, or dividends~~
34 ~~or benefits, or any combination thereof, for ordinary life insurance~~
35 ~~or individual life annuity on a female life may be calculated as~~
36 ~~follows: (A) according to an age not less than three years nor more~~
37 ~~than six years younger than the actual age of the female insured~~
38 ~~or female annuitant, in the case of a contract of ordinary life~~
39 ~~insurance with a face value greater than five thousand dollars~~
40 ~~(\$5,000) or a contract of individual life annuity; and (B) according~~

1 to an age not more than six years younger than the actual age of
2 the female insured, in the case of a contract of ordinary life
3 insurance with a face value of five thousand dollars (\$5,000) or
4 less. "Compliance date" as used in this paragraph shall mean the
5 date or dates established as the operative date or dates by future
6 amendments to this code directing and authorizing life insurers to
7 use a mortality table containing mortality data segregated by sex
8 for the calculation of adjusted premiums and present values for
9 nonforfeiture benefits and valuation reserves as specified in
10 Sections 10163.1 and 10489.2 or successor sections.

11 (4) Notwithstanding the provisions of this subdivision, sex-based
12 differentials in rates or dividends or benefits, or any combination
13 thereof, shall not be required for (A) any contract of life insurance
14 or life annuity issued pursuant to arrangements which may be
15 considered terms, conditions, or privileges of employment as these
16 terms are used in Title VII of the Civil Rights Act of 1964 (Public
17 Law 88-352), as amended, and (B) tax sheltered annuities for
18 employees of public schools or of tax exempt organizations
19 described in Section 501(c)(3) of the Internal Revenue Code.

20 (g) Making or disseminating, or causing to be made or
21 disseminated, before the public in this state, in any newspaper or
22 other publication, or any other advertising device, or by public
23 outcry or proclamation, or in any other manner or means whatever,
24 whether directly or by implication, any statement that a named
25 insurer, or named insurers, are members of the California Insurance
26 Guarantee Association, or insured against insolvency as defined
27 in Section 119.5. This subdivision shall not be interpreted to
28 prohibit any activity of the California Insurance Guarantee
29 Association or the commissioner authorized, directly or by
30 implication, by Article 14.2 (commencing with Section 1063).

31 (h) Knowingly committing or performing with such frequency
32 as to indicate a general business practice any of the following
33 unfair claims settlement practices:

34 (1) Misrepresenting to claimants pertinent facts or insurance
35 policy provisions relating to any coverages at issue.

36 (2) Failing to acknowledge and act reasonably promptly upon
37 communications with respect to claims arising under insurance
38 policies.

1 ~~(3) Failing to adopt and implement reasonable standards for the~~
2 ~~prompt investigation and processing of claims arising under~~
3 ~~insurance policies.~~

4 ~~(4) Failing to affirm or deny coverage of claims within a~~
5 ~~reasonable time after proof of loss requirements have been~~
6 ~~completed and submitted by the insured.~~

7 ~~(5) Not attempting in good faith to effectuate prompt, fair, and~~
8 ~~equitable settlements of claims in which liability has become~~
9 ~~reasonably clear.~~

10 ~~(6) Compelling insureds to institute litigation to recover amounts~~
11 ~~due under an insurance policy by offering substantially less than~~
12 ~~the amounts ultimately recovered in actions brought by the~~
13 ~~insureds, when the insureds have made claims for amounts~~
14 ~~reasonably similar to the amounts ultimately recovered.~~

15 ~~(7) Attempting to settle a claim by an insured for less than the~~
16 ~~amount to which a reasonable person would have believed he or~~
17 ~~she was entitled by reference to written or printed advertising~~
18 ~~material accompanying or made part of an application.~~

19 ~~(8) Attempting to settle claims on the basis of an application~~
20 ~~which was altered without notice to, or knowledge or consent of,~~
21 ~~the insured, his or her representative, agent, or broker.~~

22 ~~(9) Failing, after payment of a claim, to inform insureds or~~
23 ~~beneficiaries, upon request by them, of the coverage under which~~
24 ~~payment has been made.~~

25 ~~(10) Making known to insureds or claimants a practice of the~~
26 ~~insurer of appealing from arbitration awards in favor of insureds~~
27 ~~or claimants for the purpose of compelling them to accept~~
28 ~~settlements or compromises less than the amount awarded in~~
29 ~~arbitration.~~

30 ~~(11) Delaying the investigation or payment of claims by~~
31 ~~requiring an insured, claimant, or the physician of either, to submit~~
32 ~~a preliminary claim report, and then requiring the subsequent~~
33 ~~submission of formal proof of loss forms, both of which~~
34 ~~submissions contain substantially the same information.~~

35 ~~(12) Failing to settle claims promptly, where liability has become~~
36 ~~apparent, under one portion of the insurance policy coverage in~~
37 ~~order to influence settlements under other portions of the insurance~~
38 ~~policy coverage.~~

39 ~~(13) Failing to provide promptly a reasonable explanation of~~
40 ~~the basis relied on in the insurance policy, in relation to the facts~~

1 or applicable law, for the denial of a claim or for the offer of a
2 compromise settlement.

3 ~~(14) Directly advising a claimant not to obtain the services of~~
4 ~~an attorney.~~

5 ~~(15) Misleading a claimant as to the applicable statute of~~
6 ~~limitations.~~

7 ~~(16) Delaying the payment or provision of hospital, medical,~~
8 ~~or surgical benefits for services provided with respect to acquired~~
9 ~~immune deficiency syndrome or AIDS-related complex for more~~
10 ~~than 60 days after the insurer has received a claim for those~~
11 ~~benefits, where the delay in claim payment is for the purpose of~~
12 ~~investigating whether the condition preexisted the coverage.~~
13 ~~However, this 60-day period shall not include any time during~~
14 ~~which the insurer is awaiting a response for relevant medical~~
15 ~~information from a health care provider.~~

16 ~~(17) Failing to estimate the cost of automotive repairs in~~
17 ~~accordance with accepted trade standards for good and~~
18 ~~workmanlike automotive repair. Estimates shall allow for repairs~~
19 ~~to be made by auto body repair shops, as defined in Section~~
20 ~~9889.51 of the Business and Professions Code. The estimates shall~~
21 ~~be based on any of the following:~~

22 ~~(A) Original equipment manufacturer repair specifications.~~

23 ~~(B) Nationally distributed and periodically updated collision~~
24 ~~estimating guides.~~

25 ~~(C) Generally accepted practices by the auto body repair and~~
26 ~~insurance industries.~~

27 ~~(18) If the repair costs will exceed the written repair estimates~~
28 ~~prepared by or for the insurer, adjusting a claimant's written repair~~
29 ~~estimate without providing one of the following:~~

30 ~~(A) An edited copy of the claimant's auto body repair shop~~
31 ~~estimate.~~

32 ~~(B) An edited copy of the insurer's estimate.~~

33 ~~(C) A supplemental estimate prepared by the insurer adjusting~~
34 ~~the itemized supplemental request from the claimant's auto body~~
35 ~~repair shop.~~

36 ~~(19) Requiring the use of nonoriginal equipment manufacturer~~
37 ~~replacement crash parts in the repair of an automobile, unless the~~
38 ~~insurer specifying the use of nonoriginal equipment manufacturer~~
39 ~~replacement crash parts only specified parts that are distributed~~
40 ~~by entities that do all of the following:~~

1 ~~(A) Agree to pay the cost of any modifications to the parts that~~
2 ~~may be necessary to effect the repair.~~

3 ~~(B) Agree to pay the cost to the auto body repair shop associated~~
4 ~~with returning the part, and to replace the part.~~

5 ~~(C) Have in place a program to analyze parts returned with~~
6 ~~defects and report the part number, lot number, and nature of each~~
7 ~~defect to the manufacturer and any entity that certifies the parts.~~

8 ~~An insurer shall obtain from the distributor and report the defect~~
9 ~~information identified in this subparagraph to the Department of~~
10 ~~Insurance upon request.~~

11 ~~(D) Indemnify the auto body repair shop for any part verified~~
12 ~~by the distributor to be defective. For purposes of this paragraph,~~
13 ~~a part with a defect rate of 5 percent or greater installed in 1,000~~
14 ~~or more vehicles shall be considered to be defective.~~

15 ~~(i) Canceling or refusing to renew a policy in violation of~~
16 ~~Section 676.10.~~